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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 DISH NETWORK L.L.C.,

16 Plaintiff,
17 vs.

18 JADOO TV, INC., SAJID SOHAIL,
19 HASEEB SHAH, EAST WEST
20 AUDIO VIDEO, INC., and PUNIT
21 BHATT,

22 Defendants.

Case No. 2:18-cv-09768-FMO-KS

**NOTICE OF MOTION AND
MOTION TO RECONSIDER
ORDER GRANTING PLAINTIFF
DISH NETWORK, LLC'S MOTION
TO COMPEL JADOO TV, INC.'S
PRODUCTION OF DOCUMENTS
PURSUANT TO LOCAL RULE 7-
18; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT**

23 Date: May 13, 2020

24 Time: 10:00 AM

25 Courtroom: 580

26 Judge: Honorable Karen L. Stevenson

NOTICE OF MOTION

PLEASE TAKE NOTICE that on May 13, 2020, at 10:00 a.m. before the Honorable Judge Karen L. Stevenson, at the United States District Court for the Central District of California, Roybal Federal Building and Courthouse, 255 E. Temple St., Los Angeles, CA, 90012, Courtroom 580, 5th Floor, Defendant Jadoo TV, Inc. (“JadooTV”) will move the Court pursuant To Local Rule 7-18 for an order granting reconsideration of its order granting Plaintiff Dish Network, LLC’s Motion To Compel Jadoo TV, Inc.’s Production Of Documents. This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on Monday, March 2, 2020.

CONCISE STATEMENT OF THE RELIEF SOUGHT

JadooTV respectfully requests that the Court reconsider its original findings in its Order on the Motion to Compel (Dkt. No. 145) that JadooTV has “refus[ed] to produce documents in response to Plaintiff’s RFPs” and that “Jadoo has sought at every turn to evade its discovery obligations in this lawsuit” (Docket No. 145 at 7).

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

JadooTV respectfully requests that the Court reconsider certain findings in its Order on Dish Network L.L.C.’s (“DISH”) Motion to Compel Production of Documents (Dkt. No. 145).

In JadooTV’s Opposition to Plaintiff Dish Network L.L.C.’S Motion to Compel Production of Documents (Dkt No. 138), JadooTV argued that DISH failed to adequately meet and confer because DISH’s counsel, before filing the motion to compel, spoke with JadooTV’s counsel just once after the bankruptcy stay was lifted. (Dkt No. 138). In response, DISH filed its Supplemental Memorandum In Support Of Motion To Compel Jadoo Tv, Inc.’s Production Of Documents (“Supplemental Memorandum”) and a supporting declaration (“Supplemental Declaration”) (Docket Nos. 140 and 140-1, respectively) and set forth facts to

1 contend that it extensively met and conferred with JadooTV. However, DISH's
2 Supplemental Memorandum and Supplemental Declaration misleadingly contained
3 no mention of the discovery process undertaken by both parties with the Bankruptcy
4 Court during the bankruptcy stay and that JadooTV worked diligently to comply
5 with the Bankruptcy Court's directives regarding discovery. Because DISH's
6 motion to compel was taken under submission without a hearing, JadooTV had no
7 opportunity to rebut these misleading facts. Thus, JadooTV respectfully submits this
8 motion for reconsideration for the Court to consider additional facts that could not
9 have been presented at the time of the decision.

10 Indeed, DISH's Supplemental Memorandum and Supplemental Declaration
11 sets forth facts that create a misleading narrative of the discovery history before the
12 filing of the motion to compel. In particular, Dish's Supplemental Memorandum and
13 Supplemental Declaration fails to mention or describe the discovery process guided
14 by Judge William Lafferty of the United States Bankruptcy Court for the Northern
15 District of California. JadooTV complied with the directives set forth by the
16 Bankruptcy Court and fulfilled its discovery obligations while the case was stayed.
17 DISH's Supplemental Memorandum and Supplemental Declaration claims JadooTV
18 refused to produce documents and evaded discovery obligations. But as detailed
19 herein, JadooTV produced documents throughout the bankruptcy process at the
20 direction of Judge Lafferty.

21 Moreover, DISH failed to conduct any such conference with JadooTV's
22 current counsel before filing its motion to compel, and as explained more fully
23 below, DISH filed the Joint Stipulation with JadooTV's authorization. On these
24 grounds, JadooTV respectfully requests that the Court reconsider its order on the
25 motion to compel.

26 **II. STATEMENT OF ISSUES TO BE DECIDED**

27 Whether a motion for reconsideration of the Court's order on the motion to
28 compel is proper where DISH's Supplemental Memorandum and Supplemental

1 Declaration contains factual inaccuracies regarding JadooTV's discovery production
 2 and makes no mention of the discovery process guided by the Bankruptcy Court
 3 during the bankruptcy stay.

4 **III. STATEMENT OF FACTS**

5 **Discovery Process During the Bankruptcy Process**

6 As an initial matter, JadooTV's current counsel was not part of any meet and
 7 confer process before the stay. *See* accompanying Declaration of Mark Punzalan
 8 ("Punzalan Decl.") ¶¶ 1,2. JadooTV filed for bankruptcy on May 31, 2019.
 9 Punzalan Decl., ¶ 3, Ex. A. JadooTV's current counsel was first retained to replace
 10 JadooTV's previous counsel in early July 2019, after JadooTV filed its Chapter 11
 11 proceeding in the Northern District of California. Punzalan Decl., ¶¶ 2, 4, Ex. 4. The
 12 Bankruptcy Court approved the retention of JadooTV's current counsel on
 13 September 5, 2019. Punzalan Decl., ¶ 4, Ex. 4

14 Once JadooTV's current counsel was retained, Judge Lafferty allowed
 15 JadooTV's new counsel some time to get up to speed regarding the discovery issues.
 16 Judge Lafferty expressed that DISH should be allowed to take some discovery but
 17 also noted the burden being placed on JadooTV to conduct discovery while engaged
 18 in a bankruptcy process. Punzalan Decl., ¶ 5, Ex. C. As such, on September 4, 2020,
 19 the parties appeared before a hearing with Judge Lafferty, and Judge Lafferty
 20 directed the parties to meet and confer regarding what discovery could be produced
 21 without undue burden to JadooTV. Punzalan Decl., ¶ 5, Ex. C. In response to Judge
 22 Lafferty's directives, Jadoo identified documents that could be unduly burdensome
 23 for JadooTV to produce while focused on its bankruptcy proceeding. *Id.*

24 During the stay, the parties appeared frequently in front of the Bankruptcy
 25 Court at Judge Lafferty's direction and discussed discovery matters during these
 26 hearings. During another hearing on September 16, 2019, Judge Lafferty stated his
 27 intent to find a "middle ground" of discovery requests that could be responded to
 28 **"with less effort than normally is required in discovery, which is a big deal."**

1 Pretty time-intensive and pretty time sinkish (ph.).” Punzalan Decl., ¶ 6, Ex. D
 2 (Transcript of September 16, 2019 Hearing at 19-20 (emphasis added)). Judge
 3 Lafferty stated his preference that JadooTV focus on finding documents in a manner
 4 that would be “relatively easily doable.” Punzalan Decl., ¶ 6, Ex. D (Transcript of
 5 September 16, 2019 Hearing at 30, line 15. During this September 16th hearing, the
 6 Court directed JadooTV to make a proposal to DISH on or before September 23,
 7 2019 regarding the production of documents for categories DISH identified as
 8 important: 1) eMedia, and 2) South Asian Super Pac (“SASP”). Punzalan Decl., ¶ 6,
 9 Ex. D (Transcript of September 16, 2019 Hearing at 33-36). As the Court directed,
 10 JadooTV made this proposal on September 23, 2019. Punzalan Decl., ¶¶ 5, 7; Exs.
 11 C, E. It should be noted that during this time, DISH began its pattern of failing to
 12 meet and confer regarding discovery issues. Rather than pick up the phone and call
 13 JadooTV’s counsel, DISH began its pattern of submitting complaints to Judge
 14 Lafferty before even notifying JadooTV’s counsel of these issues. Punzalan Decl., ¶
 15 7; Ex. E. (“JadooTV, however, certainly wishes that DISH would have first raised
 16 this in a direct meet and confer between the parties rather than burdening the Court
 17 with a discovery dispute that may have turned out not to be a dispute at all.”)

18 During the next hearing with Judge Lafferty on October 2, 2019, Judge
 19 Lafferty directed JadooTV to meet and confer with DISH to identify the specific
 20 burdens involved with producing certain categories of documents. As Judge Lafferty
 21 directed, JadooTV identified these burdens but expressed its desire to further meet
 22 and confer to resolve any further discovery issues. Punzalan Decl., ¶ 8, Ex. F.
 23 During the next hearing on October 23, 2019, Judge Lafferty continued to guide the
 24 parties in discovery and directed JadooTV to produce documents related to Haseeb
 25 Shah, documents from eight custodians identified by DISH in an October 22, 2019
 26 submission to the Court, sales and financial documents, and all documents directed
 27 by Judge Stevenson in Dkt. No 96. Punzalan Decl., ¶ 9, Ex. G.” JadooTV produced
 28 the documents directed by Judge Lafferty. Punzalan Decl., ¶ 10, Ex. H.

1 However, similar to DISH's attempt in this motion to compel, DISH
2 continued to try and create the appearance to the Bankruptcy Court that JadooTV
3 was engaging in discovery impropriety without any attempt to confer with
4 JadooTV's counsel. On November 11, 2019, JadooTV submitted a status report to
5 Judge Lafferty in advance of a November 13, 2020 hearing. In that status report,
6 JadooTV expressed its frustrations to Judge Lafferty about Dish's failure to meet
7 and confer. Punzalan Decl., ¶ 11, Ex. I. As stated in that letter, DISH continually
8 failed to respond directly to JadooTV's proposals and instead continued to burden
9 the Court without first contacting JadooTV's counsel. *Id.*

10 At a December 11, 2019 hearing with Judge Lafferty, JadooTV informed the
11 Bankruptcy Court that it had produced the documents directed by Judge Lafferty to
12 be produced, namely: documents related to Haseeb Shah, documents from eight
13 custodians identified by DISH in an October 22, 2019 submission to the Court, sales
14 and financial documents, eMedia documents, and SASP documents. Punzalan Decl.,
15 ¶ 12, Ex. 10. Again, these discovery documents were produced in conjunction with
16 Judge Lafferty's guidance and direction.

17 **DISH Files Its Motion to Compel Just One Week After the Lifting of the Stay**

18 On January 8, 2020, the parties agreed to lift the stay effective January 14,
19 2020. Punzalan Decl., ¶ 13, Ex. K. In yet another attempt to mislead the Court,
20 DISH's Supplemental Reply and Supplemental Declaration completely
21 mischaracterizes the *one* phone call between DISH and JadooTV's counsel before
22 JadooTV filing the motion to compel. On January 22, 2020, a little more than one
23 week after the stay was lifted, DISH and JadooTV's counsel had a phone call in
24 which both counsel agreed to schedule another call to discuss the discovery issue.
25 Punzalan Decl., ¶ 14, Ex. M. During this January 22nd call, the parties' counsel
26 agreed that because of the large number of discovery requests to discuss, the most
27 efficient method to address each issue was for JadooTV's counsel to fill in
28 JadooTV's positions in a joint stipulation and schedule another call to discuss each

1 issue in detail. Punzalan Decl., ¶ 14, Ex. M. This January 22nd call was very brief,
 2 and the parties did not address any requests in substance. Punzalan Decl., ¶ 14.

3 As the counsel agreed, on January 24, 2020, JadooTV's counsel emailed
 4 DISH's counsel with its version of the stipulation and asked to get on another phone
 5 call. Punzalan Decl., ¶ 15, Ex. L. However, without JadooTV's counsel's
 6 authorization, DISH's counsel filed the Joint Stipulation and motion to compel on
 7 the next day, a Saturday. Dkt. No. 132; *see also* Punzalan Decl., Ex. M. In keeping
 8 with its gamesmanship, DISH filed the motion to compel on a weekend without first
 9 calling JadooTV's counsel or scheduling a call as the counsel had agreed. Although
 10 Local Rule 37-2.2 requires the non-movant to sign this stipulation "electronically or
 11 otherwise", JadooTV's counsel did not provide any signature or authorization for
 12 the filing of this stipulation. Punzalan Decl., ¶ 15, Ex. L.

13 The parties' counsel's only substantive call regarding these discovery matters
 14 occurred on February 10, 2020, *more than two weeks after* DISH filed the Joint
 15 Stipulation without JadooTV's counsel's authorization. DISH's counsel only
 16 scheduled this call after reviewing JadooTV's memorandum in opposition to the
 17 motion to compel. Punzalan Decl., ¶¶ 17, 18; Ex. N. But during that call, DISH's
 18 counsel, who had previously been civil in direct communications, engaged in a 45-
 19 minute call whereby DISH's counsel continually yelled unprofessionally at
 20 JadooTV's counsel. Punzalan Decl., ¶¶ 17, 18; Ex. N. Instead of discussing the
 21 issues, DISH's counsel yelled repeatedly without engaging in an actual dialogue,
 22 and JadooTV's counsel repeatedly requested that DISH's counsel lower his voice
 23 and act professionally. Punzalan Decl., ¶¶ 17, 18; Ex. N. Despite this
 24 unprofessionalism, during this call, JadooTV made several proposals to resolve the
 25 issues but received only loudly-voice accusations in response. Punzalan Decl., ¶¶
 26 17, 18; Ex. N. In an attempt to again create a misleading written record, DISH's
 27 counsel sent an email to JadooTV's counsel claiming JadooTV "reneged" on a
 28 promise. However, JadooTV's counsel responded that it reneged on no promise and

1 would, as it had done since being retained in July 2019, work with DISH to produce
2 all relevant documents. Punzalan Decl., Ex. N.

3 **ARGUMENT**

4 **A. Legal Standard**

5 A district court has the inherent power to reconsider and modify its orders
6 prior to the entry of judgment. *Smith v. Massachusetts*, 543 U.S. 462, 475 (2005).
7 Once an order of the court is entered, the court can set aside or change it on a
8 motion for reconsideration. *Ground v. Sullivan*, 785 F. Supp. 1407, 1411 (S.D. Cal.
9 1992) (citation omitted). Reconsideration may be proper where the movant shows a
10 manifest error of law or newly discovered evidence, or where the district court has
11 misunderstood a party or made an error of apprehension. *Villanueva v. United*
12 *States*, 662 F.3d 124, 128 (1st Cir. 2011). Under Local Rule 7-18, a motion for
13 reconsideration may be made only on the grounds of (a) a material difference in fact
14 or law from that presented to the Court before such decision that in the exercise of
15 reasonable diligence could not have been known to the party moving for
16 reconsideration at the time of such decision, or (b) the emergence of new material
17 facts or a change of law occurring after the time of such decision, or (c) a manifest
18 showing of a failure to consider material facts presented to the Court before such
19 decision.

20 Here, JadooTV respectfully requests that the Court reconsider its original
21 findings that JadooTV has “refus[ed] to produce documents in response to
22 Plaintiff’s RFPs” (Dkt. No. 145 at 7) and that “Jadoo has sought at every turn to
23 evade its discovery obligations in this lawsuit” (Docket No. 145 at 7). As stated
24 above, DISH’s Supplemental Memorandum and Supplemental Declaration, filed
25 after JadooTV’s memorandum, provided misleading factual statements and omitted
26 key facts regarding the discovery history. Because this matter was submitted on the
27 papers and without a hearing, JadooTV had no opportunity to rebut these misleading
28

1 factual statements, and as such, these facts constitute material differences in fact that
 2 presented to the Court before its decision that in the exercise of reasonable diligence
 3 could not have been known to JadooTV. As such, JadooTV respectfully requests
 4 that the Court grant JadooTV's motion for reconsideration.

5 **1. DISH's Description of the Discovery Process Creates a Misleading**
 6 **Narrative of the Discovery Process Overseen by Judge William**
 7 **Lafferty of the United States Bankruptcy Court**

8 As stated above, DISH's Supplemental Memorandum and Supplemental
 9 Declaration created the misleading narrative that JadooTV refused to produce
 10 documents and evaded discovery obligations. But as stated above and detailed in the
 11 accompanying declaration of Mark Punzalan, JadooTV actively produced
 12 documents throughout the bankruptcy process at the direction of Judge Lafferty.
 13 DISH's Supplemental Declaration, however, makes no mention of this involved
 14 proceeding with the Bankruptcy Court.

15 While JadooTV faced tremendous burdens in responding to DISH's discovery
 16 requests given its new counsel who had not been involved in the previous discovery
 17 efforts by JadooTV's former counsel. Moreover, JadooTV was undergoing an
 18 arduous process through bankruptcy which led Judge Lafferty to try and direct a
 19 more limited form of discovery. While JadooTV had to focus its efforts on
 20 restructuring through bankruptcy, it nevertheless agreed to and produce documents
 21 relating to categories that DISH thought was most relevant in the underlying
 22 litigation. Once the stay was lifted on January 14, 2020, the parties were no longer
 23 in the limited discovery world of the Bankruptcy Court, and JadooTV was ready to
 24 engage in the discovery posture before the stay. Instead of focusing its efforts on
 25 discovery, however, JadooTV, which still has a bankruptcy matter pending before
 26 Judge Lafferty, has been forced to spend its limited funds and resources on this
 27 motion to compel. However, burdening the Court with this motion to compel could
 28 have been avoided if DISH's counsel adequately met and conferred with JadooTV's

counsel before filing the motion.

2. DISH Failed to Schedule a Pre-Motion Telephonic Conference with JadooTV's New Counsel

Moreover, DISH should have conducted a telephonic conference pursuant to the Court's standing order. As the Court's standing order states, once the parties reach an impasse regarding discovery, any movant on a motion to compel must contact the Court within twenty-four hours of the last conference. DISH's counsel failed to do this, however. While DISH conducted a conference in early 2018 with JadooTV's former counsel, DISH failed to conduct any such conference with JadooTV's current counsel before filing its motion to compel. As stated above, DISH also filed the Joint Stipulation with JadooTV's authorization. On these grounds, JadooTV respectfully requests that the Court reconsider the order on the motion to compel.

IV. CONCLUSION

As stated herein, JadooTV has cooperated with DISH in producing discovery and will continue to cooperate to produce all relevant documents. DISH, not JadooTV, is the party that has failed to repeatedly meet and confer regarding discovery, and a proper meet and confer could have avoided the time and expense in this motion to compel. JadooTV respectfully requests that the Court reconsider its rulings stating that JadooTV has refused to produce discovery and that it has evaded discovery.

Dated: March 9, 2020

CHAN PUNZALAN LLP

/s/ Mark Punzalan

Mark Punzalan

Counsel for Defendants

Jadoo TV, Inc. and Sajid Sohail